

§ 402.1

402.8 Tenant protections if an expiring contract is not renewed.

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 63 FR 48953, Sept. 11, 1998, unless otherwise noted.

§ 402.1 What is the purpose of part 402?

This part sets out the terms and conditions under which HUD will renew project-based section 8 contracts under the authority provided in section 524(a)(1) or (2) of MAHRA. Renewal will also be in accordance with § 401.601 of this chapter for eligible projects without a HUD-approved Restructuring Plan under part 401 of this chapter. This part permits renewal notwithstanding part 24 of this title, but subject to section 516 of MAHRA (see § 402.7).

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998]

§ 402.2 Definitions.

The definitions in § 401.2 of this chapter apply to this part.

§ 402.3 Contract provisions.

The provisions of chapter VIII of this title will apply only to the extent, if any, provided in the contract. Part 983 of this title will not apply.

§ 402.4 Contract renewals under section 524(a)(1) of MAHRA.

HUD may renew any expiring section 8 project-based assistance contract at initial rents that do not exceed comparable market rents. If the project is eligible for a Restructuring Plan under part 401 of this chapter, the owner's request for a renewal will be processed under § 401.601 of this chapter to determine whether a Restructuring Plan is needed. After comparable market rents have been initially established, any future rent adjustments will be determined by using an OCAF as provided in § 401.412 of this chapter, except that rents may be re-determined using a budget-based rent adjustment from time-to-time at the discretion of HUD. OCAF and budget-based adjustments may be positive or negative. The term of the initial and subsequent contract renewals under this section will be de-

24 CFR Ch. IV (4-1-99 Edition)

termined by the appropriate HUD official.

§ 402.5 Contract renewals under section 524(a)(2) of MAHRA.

(a) *Renewal for exception project at owner's request.* HUD will renew project-based assistance under this section instead of § 402.4 if requested by the owner of a project described in paragraph (b) of this section. The term of the initial and subsequent contract renewals under this section will be determined by the appropriate HUD official.

(b) *Exception projects included.* This section applies to:

(1) A project described in section 524(a)(2)(A) through (D) of MAHRA; and

(2) A project described in section 524(a)(2)(E) of MAHRA.

(c) *Initial rent levels for exception projects.* If the owner of such a project requests renewal of project-based assistance under this section, HUD will initially renew the expiring contract at the lesser of:

(1) Existing rents adjusted by an operating cost adjustment factor established by HUD (OCAF);

(2) A budget-based rent determined in accordance with § 514(g)(3)(a) through (e) of MAHRA, except that HUD rather than a PAE will determine operating expenses and HUD may adjust the debt service component to reflect competitive interest rates; or

(3) In the case of a contract under the section 8 moderate rehabilitation program (other than single room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act), the lesser of existing rents adjusted by an OCAF, fair market rents (less any amounts allowed for tenant-purchased utilities), or comparable market rents.

(d) *Rent adjustments.* Rent adjustments (either positive or negative) for contracts renewed under this section will be determined using an operating cost adjustment factor as provided in § 401.412 of this chapter, except that rents may be redetermined using a budget-based rent adjustment from time-to-time at the discretion of HUD.

A budget-based adjustment may include a rent comparability analysis.

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998]

§ 402.6 What actions must an owner take to request section 8 contract renewal under this part?

(a) *Timing and content of request.* For renewals of contracts with expiration dates on or after October 1, 1998, an owner must submit the following information to HUD (or to the contract administrator in the case of a contract under the moderate rehabilitation program) at least 3 months before the expiration date of any project-based section 8 contract on a project or as soon as practicable if the contract expires before January 13, 1999:

(1) A certification that neither the owner nor any affiliate is suspended or debarred;

(2) A comparable market rent analysis (unless the project is eligible under § 402.5(b)(1) or does not have a HUD-insured or HUD-held mortgage, and the owner is not seeking renewal under § 402.4); and

(3) If an owner is seeking contract renewal under § 402.4, the prior fiscal year's audited financial statement for the project and an owner's evaluation of physical condition as provided in § 401.450 of this chapter.

(b) *Interim extension.* While a determination of owner eligibility for a request for renewal under § 402.4 or § 402.5(b)(2) of this chapter is pending, HUD may extend the contract under § 401.600 of this chapter except that the term of the extension will be determined by HUD in its sole discretion.

(c) *Exception for moderate rehabilitation contracts.* Paragraphs (a) and (b) of this section do not apply to requests for renewal of section 8 moderate rehabilitation contracts (other than for single room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act). Separate instructions for renewal requests will be issued by the appropriate HUD official.

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§ 402.7 Refusal to consider an owner's request for a section 8 contract renewal because of actions or omissions of owner or affiliate.

(a) *Determination of eligibility.* HUD may elect not to consider the request for renewal of project-based assistance if, at any time before contract renewal:

(1) The owner or an affiliate is debarred or suspended under part 24 of this title; or

(2) HUD determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516 of MAHRA, including any outstanding violations of civil rights laws in connection with any project of the owner or an affiliate.

(b) *Dispute and appeal.* An owner may dispute a rejection and seek administrative review under the procedures in subpart F of part 401 of this chapter.

(c) *Consequences of refusal to consider request.* If an owner's request for renewal of project based assistance is rejected under this section, HUD may provide tenant-based assistance under § 401.602 of this chapter.

§ 402.8 Tenant protections if an expiring contract is not renewed.

(a) *Notice of non-renewal or rent increase.* An owner who is not eligible for a Restructuring Plan under the Mark-to-Market Program in part 401 of this chapter but who fails to renew an expiring contract must provide a 180-day notice of non-renewal to tenants and HUD as provided in section 8(c)(9) of the United States Housing Act of 1937 and a 90-day notice to tenants of any rent increase as provided in section 8(c)(8) of that Act. HUD may prescribe the form of the notices.

(b) *If an owner does not give timely notice.* If an owner does not give timely notice of non-renewal or a rent increase, the owner must permit the tenants in assisted units to remain in their units, with no increase in the tenant portion of their rent, for a period of 180 or 90 days, whichever is the required period for the notice that was not given. Each period will begin on the earlier of the date notice of non-renewal was given to the tenants and HUD or the date notice of rent increase